

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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DIRECTOR

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John P. Houston
Senate
State House, Room 213B
Boston, Massachusetts 02133

Dear Senator Houston:

This letter is in response to your recent request for an advisory opinion.

You have stated that you currently operate an office in Worcester to better serve the citizens of your district. You are considering a move into better space and would like to sublease space from a private, non-profit "501(c)4" corporation, which leases space in a private office building. The non-profit corporation is partially funded by the Commonwealth to operate a residential energy conservation program. The payments for such subleased office space will be at fair market value.

You have asked whether it would be appropriate, under M.G.L. c.55, for your political committee to pay for such space.

We will attempt to answer your inquiry by identifying what we consider to be critical issues and responding to such issues.

1. May a political committee organized on behalf of an individual candidate sublease office space from a third party?

Section 6 of M.G.L. c.55 permits candidates and their political committees to make political expenditures so long as such expenditures are not "primarily for the candidate's or any other person's personal use." In addition, the regulations promulgated under M.G.L. c.55 provide that candidates and political committees may make expenditures for "reasonable and necessary expenses in connection with the operation of a campaign office or offices." These expenses may cover telephones, furniture, office rent and equipment, and utilities. 970 C.M.R. 2.05(2)(h).

It is the opinion of this office that your political committee may share office space with or sublet such space from another organization, provided the fair market value for such space (a pro rated portion of the lease and any utilities and other operational expenses) is paid by your committee. Any payment of less than fair market value for such space would constitute an in-kind contribution from the non-profit corporation. Because of the nature of the governmental funding of the non-profit corporation from which you wish to sublet space, there may be difficulties under the campaign finance law in accepting such an in-kind contribution and we would therefore advise your committee to undertake full payment of the fair market value of the office space.

2. Is the lease of office space by a candidate's political committee from a governmental organization a political use of a governmental facility which is prohibited under M.G.L. c.55?

The Supreme Judicial Court in Anderson vs. City of Boston (Mass. 380 N.E. 3d 628, 1978) stated that M.G.L. c.55 was "intended to reach all political fundraising and expenditures within the Commonwealth If the Legislature had expected that municipalities would engage in such activities or intended that they could, G.L. c.55 would have regulated those activities as well."

Section 22A of M.G.L. c.55 prescribes a reporting procedure for expenditure of funds by a municipality to influence or affect the vote on a question submitted to the voters. The statute does not describe a similar procedure for reporting municipal expenditures for the purpose of nominating or electing a candidate and, as the Court stated in Anderson, because such expenditures are not expressly permitted, they are prohibited.

This office cannot make a determination, based the facts you have provided, as whether or not a "501(c)4" corporation may be considered a governmental entity and thus subject to the prohibitions of expenditures by municipalities on behalf of candidates.

It is the opinion of this office, however, that the lease of office space by your committee from a governmental organization would be prohibited under M.G.L. c.55 as a governmental contribution for the purpose of your nomination or election unless such office space would be offered to any other member of the general public on the same terms offered to your political committee.

3. May a candidate's political committee pay for office space which is used as other than a campaign office?


As the regulations cited above state, a candidate's political committee may pay for a campaign office. In addition, both the statute and the regulations clearly differentiate between those expenditures which are political in nature and those which may be considered "governmental" or "legislative." Specifically, the regulations permit expenditures related to campaigning (for votes), fundraising and political relations with constituents. The position of this office is that any expenses which are, or may be, reimbursed by the Commonwealth because such expenses are incurred as part of a candidate's duties as a legislator may not be reimbursed by such candidate's political committee.

It is the opinion of this office, therefore, that if the office in Worcester for which your political committee proposes to pay is political in nature, the expenditure is appropriate under M.G.L. c.55. If, however, such office is run as a legislative office, your political committee may not undertake to pay for it.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,



Mary F. McTigue
Director

MFM-PLH/bah